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 IN THE UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION

17 UNITED STATES OF AMERICA

18 Plaintiff,

19 v.

20 LEVAN SPECIALTY COMPANY,
 21 INC.

22 Defendant.

Civil Action No.

CV 13-02887

PA
(JEM)

CONSENT DECREE

24 LODGED
 25 CLERK, U.S. DISTRICT COURT

26 APR 24 2013

27 CENTRAL DISTRICT OF CALIFORNIA
 28 DEPUTY

Consent Decree

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA") has filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607, seeking reimbursement of response costs incurred and to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Puente Valley Operable Unit ("PVOU") of the San Gabriel Valley Superfund Site, Area 4, Los Angeles County, California (the "Site").

B. This Consent Decree provides for the reimbursement of a portion of the United States' Past Response Costs at this Site by LeVan Specialty Company, Inc. ("Settling Defendant").

C. By entering into this Consent Decree, Settling Defendant does not admit liability to or arising out of the transactions or occurrences alleged in the Complaint or to any other person related to the Site.

D. The United States has reviewed the Financial Information submitted by Settling Defendant to determine whether Settling Defendant is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, the United States has determined that Settling Defendant is able to pay the amounts specified in Section VI.

E. The United States and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

1 c. "CERCLA" shall mean the Comprehensive Environmental
2 Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §
3 9601, et seq.

4 d. "Consent Decree" shall mean this Consent Decree and any
5 appendices attached hereto.

6 e. "Day" shall mean a calendar day. In computing any period of
7 time under this Consent Decree, where the last day falls on a Saturday, Sunday, or
8 federal holiday, the period shall run until the close of business of the next working
9 day.

10 f. "DOJ" shall mean the United States Department of Justice and
11 any successor departments, agencies, or instrumentalities of the United States.

12 g. "Effective Date" shall mean the date of entry of this Consent
13 Decree.

14 h. "EPA" shall mean the United States Environmental Protection
15 Agency and any successor departments, agencies, or instrumentalities of the
16 United States.

17 I. "EPA Hazardous Substance Superfund" shall mean the
18 Hazardous Substance Superfund established by the Internal Revenue Code, 26
19 U.S.C. § 9507.

20 j. "ESD" shall mean the Explanation of Significant Differences
21 issued by EPA on June 14, 2005 for the Record of Decision.

22 k. "Facility" shall mean the Site.

23 l. "Financial Information" shall mean those financial documents
24 identified in Appendix B.

25 m. "Future Response Costs" shall mean all costs, including but
26 not limited to Oversight Costs, direct or indirect costs, and Basin-wide Response
27 Costs allocated to the Site, including Interest, that the United States or any third
28 party pays or incurs at or relating to the Site after the date of entry of this Consent
Consent Decree

1 Decree, but prior to the later of (I) the date eight (8) years from the Operational
2 and Functional Date of the Carrier Consent Decree, or (ii) the date of issuance of a
3 final Record of Decision for the Site.

4 n. "Interest" shall mean interest at the applicable rate specified for
5 interest on investments of the Hazardous Substance Superfund established by 26
6 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance
7 with 42 U.S.C. § 9607(a).

8 o. "Oversight Costs" shall mean all direct and indirect costs,
9 including Interest, that the United States incurs in connection with monitoring and
10 supervising performance of the Response Work by other persons.

11 p. "Paragraph" shall mean a portion of this Consent Decree
12 identified by an Arabic numeral or an upper or lower case letter.

13 q. "Parties" shall mean the United States and the Settling
14 Defendant.

15 r. "Past Response Costs" shall mean all costs, including but not
16 limited to Oversight Costs, direct and indirect costs, and Basin-wide Response
17 Costs allocated to the Site, including Interest, that the United States or any third
18 party has paid or incurred at or relating to the Site through and including the date
19 of entry of this Consent Decree.

20 s. "Plaintiff" shall mean the United States.

21 t. "Record of Decision" or "ROD" shall mean the September 30,
22 1998 EPA Interim Record of Decision for the Puente Valley Operable Unit (Area
23 4) of the San Gabriel Valley Superfund Sites, Areas 1-4.

24 u. "Response Work" shall mean the design and implementation of
25 any remedial measures, including the operation and maintenance thereof,
26 encompassed within the Record of Decision as modified by the ESD.

27 v. "Section" shall mean a portion of this Consent Decree
28

1 identified by a Roman numeral.

2 w. "Settling Defendant" shall mean LeVan Specialty Company,
3 Inc., a California corporation.

4 x. "Site" shall mean the facility, which consists of an area of
5 groundwater contamination in Los Angeles County, California, located in the
6 geographic area designated on the National Priorities List as the San Gabriel
7 Valley Superfund Site, Area 4 and identified as the Puente Valley Operable Unit.
8 *See* 49 Fed. Reg. 19480 (1984).

9 y. "State" shall mean the State of California.

10 z. "United States" shall mean the United States of America,
11 including its departments, agencies and instrumentalities.

12 **V. STATEMENT OF PURPOSE**

13 4. By entering into this Consent Decree, the mutual objective of the
14 Parties is for Settling Defendant to make a cash payment to address its liability for
15 the Site as provided in the Covenant Not to Sue by Plaintiff in Section VIII, and
16 subject to the Reservations of Rights by United States in Section VIII, Paragraph
17 15.

18 **VI. REIMBURSEMENT OF RESPONSE COSTS**

19 5. Payments to the EPA Hazardous Substance Superfund. Settling
20 Defendant shall pay to the EPA Hazardous Substance Superfund the amount of
21 One Hundred Fifty Five Thousand Dollars (\$155,000) in reimbursement of Past
22 Response Costs. Payment shall be made as follows:

23 a. Settling Defendant shall, within thirty (30) working Days after
24 entry of this Consent Decree, remit the principal of one hundred fifty five
25 thousand dollars (\$155,000) to the United States. Payment to the United States
26 shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S.
27 Department of Justice in accordance with current EFT procedures, referencing the
28 USAO File Number, EPA Region IX, the Site/Spill ID Number 09-8V, and DOJ

Case Number 90-11-2-354/30. Payment shall be made in accordance with instructions provided to the Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office for the Central District of California following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business Day. Settling Defendant shall send notice to EPA and DOJ that payment has been made in accordance with Section XIV (Notices and Submissions) and to David Wood, MTS-4-2, Supervisory Accountant, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105.

b. The one hundred fifty five thousand dollars (\$155,000) paid by Settling Defendant to the United States shall be deposited in the "San Gabriel Valley Superfund Sites, Area 4, Special Account" within the EPA Hazardous Substance Superfund. This Special Account shall be retained and used to conduct or finance response actions at or in connection with the Site or the San Gabriel Valley Superfund Sites (Areas 1- 4), or may be transferred by EPA from this Special Account to the EPA Hazardous Substance Superfund.

VII. FAILURE TO COMPLY WITH REQUIREMENTS

6. Interest on Late Payments. In the event that any payment required under Section VI (Reimbursement of Response Costs) or Section VII, Paragraph 7 (Stipulated Penalties) is not received when due, Interest shall continue to accrue on the unpaid balance through the date of payment. Settling Defendant shall be liable for any such Interest pertaining to the payments required under Section VI, paragraphs 5.a. (Reimbursement of Response Costs).

7. Stipulated Penalties.

a. Settling Defendant shall be liable for stipulated penalties for late payments under Section VI, paragraphs 5.a. (Reimbursement of Response Costs) and for the Interest on late payments under Section VI, paragraphs 5.a. as

required under Section VII, Paragraph 6. The stipulated penalties shall be in the following amounts per violation per Day that any such payment is late:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th Day
\$1,500	15th through 30th Day
\$2,500	31st Day and beyond

b. Settling Defendant shall be liable for stipulated penalties in the amount of one thousand five hundred dollars (\$1,500) per Day per violation of the provisions contained in Sections XII (Access To Information), and XIII (Retention of Records).

8. All Interest and penalties set forth under this Section shall begin to accrue on the Day a violation occurs, and shall continue to accrue through the final Day of the correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

9. Interest and stipulated penalties shall accrue as provided in Paragraphs 6 and 7, regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment, but need be paid only upon demand.

10. Interest and stipulated penalties set forth under this Section shall be due and payable within thirty (30) Days of the date of demand for payment. All payments to the United States under this Paragraph shall be made by certified or cashier's check made payable to the "EPA Hazardous Substances Superfund," shall be forwarded to the U.S. EPA, Region IX, Superfund Payments, Cincinnati Finance Center, P.O. Box 979076, St. Louis, MO 63197-9000, shall indicate that payment is for Interest and/or stipulated penalties, and shall reference EPA Region IX, the Site/Spill Identification Numbers 09-8V, the USAO File Number, the DOJ Case Number 90-11-2-354/30, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Paragraph, and any

1 accompanying transmittal letter(s), shall be forwarded to DOJ and EPA as
2 provided in Section XIV (Notices and Submissions), and to David Wood, PMD-6,
3 Section Chief, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco,
4 California 94105.

5 11. Notwithstanding any other provision of this Section, the United
6 States may, in its unreviewable discretion, waive any portion of Interest or
7 stipulated penalties that have accrued pursuant to this Consent Decree.

8 12. Payments made under this Section shall be in addition to any other
9 remedies or sanctions available to Plaintiff by virtue of Settling Defendant's
10 failure to comply with the requirements of this Consent Decree.

11 13. If the United States brings an action against Settling Defendant to
12 enforce this Consent Decree, Settling Defendant shall reimburse the United States
13 for all costs of such action, including but not limited to costs of attorney time.

14 **VIII. COVENANT NOT TO SUE BY PLAINTIFF**

15 14. Covenant Not to Sue. Except as specifically provided in Paragraph
16 15 (Reservation of Rights), Plaintiff covenants not to sue or to take any
17 administrative action against Settling Defendant for performance of Response
18 Work, Past Response Costs and Future Response Costs, pursuant to Section 7003
19 of RCRA, 42 U.S.C. § 6973, or Sections 106 and 107(a) of CERCLA, 42 U.S.C.
20 §§ 9606 and 9607(a). This covenant shall take effect upon receipt by Plaintiff of
21 the payments set forth in Paragraph 5. This covenant is conditioned upon Settling
22 Defendant's satisfactory performance of its obligations under this Consent Decree.
23 This covenant extends only to Settling Defendant and does not extend to any other
24 person.

25 15. Reservation of Rights. The covenant not to sue set forth in Paragraph
26 14 does not pertain to any matters other than those expressly specified therein.
27 The Plaintiff reserves, and this Consent Decree is without prejudice to all rights
28 against Settling Defendant with respect to other matters, including but not limited

1 to:

2 a. liability for failure by Settling Defendant to meet a requirement
3 of this Consent Decree;

4 b. liability for damages for injury to, destruction of, or loss of
5 natural resources, and for the costs of any natural resource damage assessments;

6 c. criminal liability; and

7 d. liability for response actions and response costs incurred or to
8 be incurred by the United States not covered as matters addressed as set forth in
9 Paragraph 20 of this Consent Decree, including but not limited to liability for any
10 response actions and response costs at the Site that occur after the later of (I) the
11 date eight (8) years from the Operational and Functional Date of the Carrier
12 Consent Decree, or (ii) the date of issuance of a final Record of Decision for the
13 Site.

14 16. Notwithstanding any other provision of this Consent Decree, EPA
15 reserves, and this Consent Decree is without prejudice to, the right to reinstitute or
16 reopen this action, or to commence a new action seeking relief other than as
17 provided in this Consent Decree, if the Financial Information provided by Settling
18 Defendant, or the financial certification made by Settling Defendant in Paragraph
19 30, is false or, in any material respect, inaccurate.

20 **IX. COVENANT NOT TO SUE BY SETTLING DEFENDANT**

21 17. Settling Defendant covenants not to sue and agrees not to assert any
22 claims or causes of action against Plaintiff or its contractors or employees with
23 respect to Response Work, Past Response Costs, and Future Response Costs, as
24 set forth in this Consent Decree, including but not limited to:

25 a. any direct or indirect claims for reimbursement from the
26 Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or
27 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any
28 other provision of law;

b. any claims arising out of costs or response actions at or in connection with the Site, including any claim under the United States Constitution, the California Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

c. any claims against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, related to the Site.

18. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

19. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

20. The Parties agree that in consideration of the payment made by Settling Defendant and the execution of this Consent Decree, Settling Defendant has resolved its liability to Plaintiff and is entitled to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for matters addressed in this Consent Decree, conditioned only upon entry of this Consent Decree. The matters addressed in this Consent Decree are: Response Work; Past Response Costs; and Future Response Costs. The matters addressed exclude those response actions and response costs to which Plaintiff has reserved its rights under this Consent Decree.

21. Settling Defendant agrees that, with respect to any suit or claim for contribution brought by Settling Defendant for matters related to this Consent Decree, Settling Defendant will notify DOJ and EPA, in writing not later than sixty (60) Days prior to the initiation of such suit or claim. Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against Settling Defendant for matters related to this Consent Decree, Settling Defendant will notify DOJ and EPA in writing within ten (10) Days of service of the complaint or claims upon Settling Defendant. In addition, Settling Defendant shall notify DOJ and EPA within ten (10) Days of service or receipt of any motion for summary judgment or any order from a court setting a case for trial, for matters related to this Consent Decree.

22. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claims based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VIII.

XI. SITE ACCESS

23. Commencing upon the date of lodging of this Consent Decree, Settling Defendant agrees to provide the United States and the State of California and their representatives, including EPA, Department of Toxic Substances Control, and Los Angeles Regional Water Quality Control Board, and their contractors, access at all reasonable times to the property within the Site owned or controlled by Settling Defendant to which access is determined by EPA to be required for the implementation of this Consent Decree, or for the purpose of

conducting any response activity related to the Site, including but not limited to:

- a. Monitoring of investigation, removal, remedial, or other activities at the Site;
- b. Verifying any data or information submitted to the United States or to the State of California;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing response actions at or near the Site; and
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or its agents, consistent with Section XII (Access to Information).

24. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Resource Conservation and Recovery Act, 42 U.S.C. § 6927, and any other applicable statutes or regulations.

XII. ACCESS TO INFORMATION

25. Settling Defendant shall provide to Plaintiff, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating in any manner to response actions taken at the Site or the liability of any person for response actions conducted and to be conducted at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

26. Confidential Business Information and Privileged Documents.

a. Settling Defendant may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under

1 this Consent Decree to the extent permitted by and in accordance with Section
2 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b).
3 Documents or information determined to be confidential by Plaintiff will be
4 accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of
5 confidentiality accompanies documents or information when they are submitted to
6 the Plaintiff, or if Plaintiff has notified Settling Defendant that the documents or
7 information are not confidential under the standards of Section 104(e)(7) of
8 CERCLA, the public may be given access to such documents or information
9 without further notice to Settling Defendant.

10 b. Settling Defendant may assert that certain documents, records,
11 or other information are privileged under the attorney-client privilege or any other
12 privilege recognized by federal law. If Settling Defendant asserts such a privilege
13 in lieu of providing documents, it shall provide Plaintiff with the following: 1) the
14 title of the document, record, or information; 2) the date of the document, record,
15 or information; 3) the name and title of the author of the document, record, or
16 information; 4) the name and title of each addressee and recipient; 5) a description
17 of the subject of the document, record, or information; and 6) the privilege
18 asserted. However, no documents, reports, or other information created or
19 generated pursuant to the requirements of this or any other consent decree with
20 Plaintiff shall be withheld on the grounds that they are privileged. If a claim of
21 privilege applies only to a portion of a document, the document shall be provided
22 to Plaintiff in redacted form to mask the privileged information only. Settling
23 Defendant shall retain all records and documents that it claims to be privileged
24 until Plaintiff has had a reasonable opportunity to dispute the privilege claim and
25 any such dispute has been resolved in Settling Defendant's favor.

26 27. No claim of confidentiality shall be made with respect to any data,
27 including but not limited to, all sampling, analytical, monitoring, hydrogeologic,
28 scientific, chemical, or engineering data, or any other documents or information

1 evidencing conditions at or around the Site.

2 **XIII. RETENTION OF RECORDS**

3 28. Until ten (10) years after the entry of this Consent Decree, Settling
4 Defendant shall preserve and retain all records and documents now in its
5 possession or control, or which come into its possession or control thereafter, that
6 relate in any manner to response actions taken at the Site or the liability of any
7 person for response actions conducted and to be conducted at the Site, regardless
8 of any corporate retention policy to the contrary. After five (5) years, Settling
9 Defendant may contact EPA in writing to request instructions as to whether such
10 records and documents shall be maintained for the remaining five (5) year
11 retention period, or whether such records and documents may be discarded. No
12 retained records or documents shall be disposed of prior to the ten (10) year
13 retention period, unless Settling Defendant receives instructions from EPA
14 specifically permitting Settling Defendant to dispose of such records and
15 documents.

16 29. After the conclusion of the ten (10) year document retention period in
17 the preceding Paragraph, Settling Defendant shall notify EPA and DOJ at least
18 ninety (90) Days prior to the destruction of any such records or documents, and,
19 upon request by EPA or DOJ, Settling Defendant shall deliver any such records or
20 documents to EPA subject to the same privilege provisions set forth in Section XII
21 (Access To Information).

22 30. By signing this Consent Decree, Settling Defendant certifies that,
23 after thorough inquiry, to the best of its knowledge and belief, Settling Defendant
24 has:

25 a. not altered, mutilated, discarded, destroyed, or otherwise
26 disposed of any records, documents, or other information relating to its potential
27 liability regarding the Site, after notification of potential liability or the filing of a
28 suit against Settling Defendant regarding the Site; and that Settling Defendant has

1 fully complied with any and all EPA requests for information regarding the Site
2 pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and
3 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

4 b. submitted to EPA Financial Information that fairly, accurately,
5 and materially sets forth its financial circumstances, and that those circumstances
6 have not materially changed between the time the Financial Information was
7 submitted to EPA and the time Settling Defendant executes this Consent Decree.

8 **XIV. NOTICES AND SUBMISSIONS**

9 31. Whenever, under the terms of this Consent Decree, notice is required
10 to be given or a document is required to be forwarded by one party to another, it
11 shall be directed to the individuals at the addresses specified below, unless those
12 individuals or their successors give notice of a change to the other Parties in
13 writing. Written notice as specified herein shall constitute complete satisfaction
14 of any written notice requirement of the Consent Decree with respect to the United
15 States (DOJ and EPA) and Settling Defendant, respectively.

16 As to the United States:

17 As to DOJ:

18 W. Benjamin Fisherow
19 Chief, Environmental Enforcement Section
20 Environment and Natural Resources Division
21 U.S. Department of Justice (DJ # 90-11-2-354/30)
22 P.O.Box 7611
23 Washington, DC 20044-7611

24 Elise S. Feldman
25 Trial Attorney
26 Environmental Enforcement Section
27 Environment and Natural Resources Division
28 U.S. Department of Justice
301 Howard Street, Suite 1050
San Francisco, CA 94105

As to EPA:

Larry Bradfish(ORC-3)
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street

San Francisco, CA 94105

As to Settling Defendant:

Thomas J. Bois
Bois & MacDonald
2030 Main Street
Irvine, CA 92614
Telephone: (949) 660-0011
Email: tbois@boismac.com

Settling Defendant may change the identity or contact information for its agent at any time by written notice to the Court and to the United States.

XV. RETENTION OF JURISDICTION

32. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVI. INTEGRATION/APPENDICES

33. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree: "Appendix A" is the relevant portions of the Carrier Consent Decree; and "Appendix B" is a list of the financial documents submitted to EPA by Settling Defendant.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

34. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

35. If for any reason this Court should decline to approve this Consent

Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVIII. EFFECTIVE DATE

36. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XIX. SIGNATORIES/SERVICE

37. Each undersigned representative of the Settling Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

38. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

39. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

XX. FINAL JUDGMENT

40. Upon approval and entry of this Consent Decree by this Court, this Consent Decree shall constitute a final judgment between the United States and

1 Settling Defendant. The Court finds that there is no just reason for delay and
2 therefore enters this judgment as the final judgment under Fed. R. Civ. P. 54 and
3 58.

4
5 SO ORDERED THIS _____ DAY OF _____, _____.

6
7
8
9 _____
United States District Judge

FOR THE UNITED STATES OF AMERICA

Dated: 1/31/13



IGNACIA S. MORENO
Assistant Attorney General
Environment & Natural Resources Division
United States Department of Justice

Dated: _____




ELISE FELDMAN
Trial Attorney
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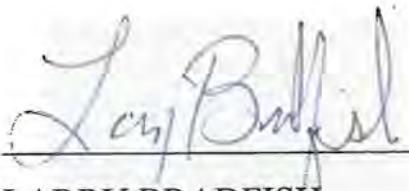
Dated: _____

JANE DIAMOND
Director
Superfund Division
U.S. Environmental Protection Agency Region IX
75 Hawthorne Street

1 Dated: 3/18/2013


JANE DIAMOND
Director
Superfund Division
U.S. Environmental Protection Agency Region IX
75 Hawthorne Street
San Francisco, CA 94105

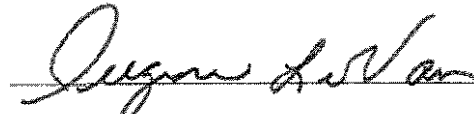
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8 Dated: Feb 4, 2013


LARRY BRADFISH
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency Region IX
75 Hawthorne Street
San Francisco, CA 94105

1 THE UNDERSIGNED PARTY enters into this Consent Decree,
2 relating to the San Gabriel Valley Superfund Site, Area 4, and further identified as
3 the Puente Valley Operable Unit.

4 FOR LEVAN SPECIALTY COMPANY, INC.

5
6
7 Dated: February 13, 2013



8 Eugene LeVan, President

9
10
11
12 Agent authorized to receive service of process pursuant to Paragraph 39:

13
14 Thomas J. Bois
15 James C. Macdonald
16 BOIS & MACDONALD
17 2030 Main Street, Suite 660
18 Irvine, California 92614
19 Telephone: (949) 660-0011
20 Facsimile: (949) 660-0022
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APPENDIX A
RELEVANT PORTIONS OF THE CARRIER CONSENT DECREE

ORIGINAL

1 SUE ELLEN WOOLDRIDGE
2 Assistant Attorney General
3 Environment & Natural Resources Division
4 United States Department of Justice

5 MATTHEW A. FOGELSON
6 Environmental Enforcement Section
7 Environment & Natural Resources Division
8 United States Department of Justice
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10 San Francisco, CA 94105
11 Telephone: (415) 744-6470
12 Facsimile: (415) 744-6476
13 E-mail: Matthew.Fogelson@usdoj.gov

14 ELIZABETH F. KROOP
15 Environmental Enforcement Section
16 Environment & Natural Resources Division
17 United States Department of Justice
18 P.O. Box 7611
19 Ben Franklin Station
20 Washington, DC 20044
21 Telephone: (202) 514-5244
22 Facsimile: (202) 514-2583
23 E-mail: Elizabeth.Kroop@usdoj.gov

24 Additional Counsel Listed on Next Page

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

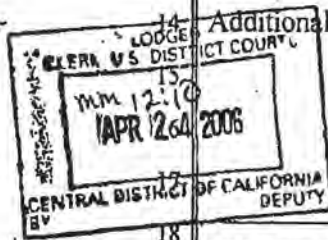
25 UNITED STATES OF AMERICA,
26
27 Plaintiff,
28
29 v.
30 CARRIER CORPORATION,
31
32 Defendant.

Case No. CV-05-6022 ABC (FMOx)

AMENDED CONSENT DECREE



— Priority
— Send
— Cisd
— Enter
— JS-5/JS-6
— JS-2/JS-3
— Scan only



29

1 III. PARTIES BOUND

2 2. This Consent Decree applies to and is binding upon the United States
3 and upon Settling Defendants and their successors and assigns. Any change in
4 ownership or corporate status of a Settling Defendant including, but not limited to,
5 any transfer of assets or real or personal property, shall in no way alter such
6 Settling Defendant's responsibilities under this Consent Decree.

7 3. Settling Defendants shall provide a copy of this Consent Decree to
8 each contractor hired to perform the Work (as defined below) required by this
9 Consent Decree and to each person representing any Settling Defendant with
10 respect to the Site or the Work and shall condition all contracts entered into
11 hereunder upon performance of the Work in conformity with the terms of this
12 Consent Decree. Settling Defendants or their contractors shall provide written
13 notice of the Consent Decree to all subcontractors hired to perform any portion of
14 the Work required by this Consent Decree. Settling Defendants shall nonetheless
15 be responsible for ensuring that their contractors and subcontractors perform the
16 Work contemplated herein in accordance with this Consent Decree. With regard to
17 the activities undertaken pursuant to this Consent Decree, each contractor and
18 subcontractor shall be deemed to be in a contractual relationship with the Settling
19 Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C.
20 § 9607(b)(3).

21 IV. DEFINITIONS

22 4. Unless otherwise expressly provided herein, terms used in this
23 Consent Decree that are defined in CERCLA or in regulations promulgated under
24 CERCLA shall have the meaning assigned to them in CERCLA or in such
25 regulations. Whenever terms listed below are used in this Consent Decree or in the
26 appendices attached hereto and incorporated hereunder, the following definitions
27 shall apply:

28 "Basin-wide Response Costs" shall mean costs, including but not limited to

1 direct and indirect costs, including accrued Interest, that the United States has
2 incurred or in the future incurs for basin-wide (non-operable unit) response actions
3 in connection with the San Gabriel Valley Superfund Sites, Areas 1 - 4.

4 "CERCLA" shall mean the Comprehensive Environmental Response,
5 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.
6 "Consent Decree" shall mean this Decree and all appendices attached hereto (listed
7 in Section XXX). In the event of conflict between this Decree and any appendix,
8 this Decree shall control.

9 "Day" shall mean a calendar day unless expressly stated to be a working
10 day. "Working Day" shall mean a day other than a Saturday, Sunday, or Federal
11 holiday. In computing any period of time under this Consent Decree, where the
12 last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run
13 until the close of business of the next working day.

14 "DOJ" shall mean the United States Department of Justice and any of its
15 successor departments, agencies, or instrumentalities.

16 "DTSC" shall mean the California Department of Toxic Substances Control
17 and any successor departments or agencies.

18 "Effective Date" shall be the effective date of this Consent Decree as
19 provided in Paragraph 117.

20 "Eligible SEP Costs" shall include the costs of implementing the
21 Supplemental Environmental Project (SEP) required pursuant to Section XVIII,
22 but do not include Settling Defendants' overhead, administrative expenses or legal
23 fees. Contractor oversight costs not exceeding 5% of \$468,750 may be included as
24 Eligible SEP Costs, so long as adequate documentation is provided.

25 "EPA" shall mean the United States Environmental Protection Agency and
26 any of its successor departments or agencies.

27 "Explanation of Significant Differences" or "ESD" shall mean the
28 Explanation of Significant differences relating to the Site issued by EPA on June

1 14, 2005. The ESD is attached as Appendix B to this Consent Decree.

2 "Future Response Costs" shall mean all costs that are incurred by the United
3 States or any third party for response actions with respect to the Site after the
4 Effective Date, but prior to the later of (i) the date 8 years from the Operational and
5 Functional Date, or (ii) the date of issuance of a final Record of Decision for the
6 Site. Future Response Costs include, but are not limited to, Basin-wide Response
7 Costs allocated to the Site, direct and indirect costs and accrued interest that the
8 United States incurs in reviewing or developing plans, reports, and other items
9 pursuant to this Consent Decree, verifying the Work, or otherwise implementing,
10 overseeing, or enforcing this Consent Decree, including but not limited to payroll
11 costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to
12 Sections VII (Remedy Review), IX (Access and Institutional Controls; including
13 but not limited to the cost of attorney time and any monies paid to secure access or
14 to secure or implement institutional controls including but not limited to the
15 amount of just compensation), XV (Emergency Response), and Paragraph 99 of
16 Section XXII (Work Takeover).

17 "Interest," shall mean interest at the rate specified for interest on investments
18 of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507,
19 compounded annually on October 1 of each year, in accordance with 42 U.S.C.
20 § 9607(a). The applicable rate of interest shall be the rate in effect at the time the
21 interest accrues. The rate of interest is subject to change on October 1 of each
22 year.

23 "Interim ROD" shall mean the Interim Record of Decision relating to the
24 Puente Valley Operable Unit of the San Gabriel Valley Superfund Sites signed on
25 September, 30 1998 by the Regional Administrator, EPA Region 9, or his/her
26 delegate, and all attachments thereto. The Interim ROD is attached as Appendix A
27 to this Consent Decree.

28 "Mid-Valley Monitoring" shall mean the installation and monitoring of

1 wells in the intermediate and deep groundwater zones in the mid-valley area of the
2 Site to monitor vertical and horizontal contaminant migration in such groundwater
3 zones, as set forth in the SOW. For purposes of this Consent Decree, the mid-
4 valley shall extend from Azusa Avenue to Puente Creek.

5 "National Contingency Plan" or "NCP" shall mean the National Oil and
6 Hazardous Substances Pollution Contingency Plan promulgated pursuant to
7 Section 105 of CERCLA, 42 U.S.C. § 9605, and codified at 40 C.F.R. Part 300,
8 and any amendments thereto.

9 "Operational and Functional" shall mean that the Remedial Action, or a
10 phase thereof, has been constructed and that it is performing in accordance with the
11 applicable SOW and the applicable final Remedial Design/ Remedial Action Work
12 Plans and other plans approved by EPA.

13 "Operational and Functional Date" shall mean the date that all phases of the
14 Remedial Action are Operational and Functional pursuant to Paragraph 50.

15 "Paragraph" shall mean a portion of this Consent Decree identified by an
16 Arabic numeral or an upper case letter.

17 "Parties" shall mean the United States and the Settling Defendants.

18 "Past Response Costs" shall mean all costs, including but not limited to
19 Basin-wide Response Costs allocated to the Site, direct and indirect costs,
20 including Interest, that the United States or any third party has paid or incurred at
21 or in connection with the Site, through and including the Effective Date.

22 "Performance Criteria" shall mean the prevention of groundwater in the
23 shallow zone north of Puente Creek at the mouth of Puente Valley with
24 contamination greater than or equal to ten-times the levels listed in Table 2 of the
25 ESD from:

26 (1) migrating beyond its lateral extent as measured at the time the
27 shallow zone Remedial Action containment system is Operational and
28 Functional; and

1 (2) migrating vertically into the intermediate zone;
2 for a period of 8 years from the Operational and Functional Date.
3 "Plaintiff" shall mean the United States.

4 "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C.
5 §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

6 "Remedial Action" shall mean those activities to be undertaken by Settling
7 Defendants to implement the shallow zone remedy north of Puente Creek and Mid-
8 Valley Monitoring, in accordance with the Interim ROD as modified by the ESD,
9 the applicable SOW, and the applicable Remedial Design/ Remedial Action Work
10 Plans and other plans approved by EPA.

11 "Remedial Action Work Plan" shall mean the document developed pursuant
12 to Paragraph 11 of this Consent Decree and approved by EPA, and any
13 amendments thereto.

14 "Remedial Design" shall mean those activities to be undertaken by Settling
15 Defendants to develop the final plans and specifications for the Remedial Action
16 pursuant to the Remedial Design Work Plan.

17 "Remedial Design Work Plan" shall mean the document developed pursuant
18 to Paragraph 10 of this Consent Decree and approved by EPA, and any
19 amendments thereto.

20 "Section" shall mean a portion of this Consent Decree identified by a Roman
21 numeral.

22 "SEP" shall mean the Woodland Duck Farm Supplemental Environmental
23 Project as described in Paragraph 62, or any alternative Supplemental
24 Environmental Project approved by EPA pursuant to Paragraph 63.

25 "SEP Implementation Plan" shall mean the document describing the SEP
26 and setting forth those activities required to implement the SEP.

27 "Settling Defendants" shall mean Carrier Corporation and United
28 Technologies Corporation.

1 "Site" shall mean the area of groundwater contamination in Los Angeles;
2 County, California, located in the geographic area designated on the National
3 Priorities List as the San Gabriel Valley Superfund Site, Area 4 [see 49 Fed. Reg.
4 19480 (1984)], and identified as the Puente Valley Operable Unit.

5 "State" shall mean the California Department of Toxic Substances Control
6 ("DTSC").

7 "Statement of Work" or "SOW" shall mean the statement of work for
8 implementation of the Remedial Design and Remedial Action at the Site, as set
9 forth in Appendix D to this Consent Decree and any modifications made in
10 accordance with this Consent Decree.

11 "Supervising Contractor" shall mean the principal contractor retained by the
12 Settling Defendants to supervise and direct the implementation of the Work under
13 this Consent Decree.

14 "Unilateral Administrative Order Docket No. 2001-20" or "UAO Docket
15 No. 2001-20" shall mean the order issued by EPA to Carrier Corporation on or
16 about September 13, 2001.

17 "United States" shall mean the United States of America.

18 "Waste Material" shall mean (1) any "hazardous substance" under Section
19 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant
20 under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste"
21 under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous
22 material" under the California Hazardous Waste Control Act Section 25100 et seq.

23 "Work" shall mean all activities Settling Defendants are required to perform
24 under this Consent Decree, except those required by Section XXVI (Retention of
25 Records) and Section XVIII (Supplemental Environmental Projects).

26 V. GENERAL PROVISIONS

27 5. Objectives of the Parties. The objectives of the Parties in entering into
28 this Consent Decree are to protect public health or welfare or the environment at

1 Decree.

2 XIV. CERTIFICATION OF COMPLETION

3 50. "Operational and Functional"

4 a. Within 30 Days after Settling Defendants conclude that the
5 Remedial Action is Operational and Functional, Settling Defendants shall schedule
6 and conduct a pre-certification inspection to be attended by Settling Defendants
7 and EPA. If, after the pre-certification inspection, the Settling Defendants still
8 believe that the Remedial Action is Operational and Functional, they shall submit a
9 written report requesting certification to EPA for approval, with a copy to the
10 State, pursuant to Section XI (EPA Approval of Plans and Other Submissions)
11 within 30 Days of the inspection. In the report, a registered professional engineer
12 and the Settling Defendants' Project Coordinator shall state that the Remedial
13 Action is Operational and Functional. The written report shall include as-built
14 drawings signed and stamped by a professional engineer. The report shall contain
15 the following statement, signed by a responsible corporate official of a Settling
16 Defendant or the Settling Defendants' Project Coordinator:

17 To the best of my knowledge, after thorough investigation, I certify
18 that the information contained in or accompanying this submission is
19 true, accurate and complete. I am aware that there are significant
penalties for submitting false information, including the possibility of
fine and imprisonment for knowing violations.

20 If, after completion of the pre-certification inspection and receipt and review of the
21 written report, EPA, after reasonable opportunity to review and comment by
22 DTSC, determines that the Remedial Action is not Operational and Functional,
23 EPA will notify Settling Defendants in writing of the activities that must be
24 undertaken by Settling Defendants pursuant to this Consent Decree in order for the
25 Remedial Action to be Operational and Functional. EPA will set forth in the notice
26 a schedule for performance of such activities consistent with the Consent Decree
27 and the SOW or require the Settling Defendants to submit a schedule to EPA for
28 approval pursuant to Section XI (EPA Approval of Plans and Other Submissions).

1 Settling Defendants shall perform all activities described in the notice in
2 accordance with the specifications and schedules established pursuant to this
3 Paragraph, subject to their right to invoke the dispute resolution procedures set
4 forth in Section XX (Dispute Resolution).

5 b. If EPA concludes, based on the initial or any subsequent report
6 requesting certification, and after a reasonable opportunity for review and
7 comment by DTSC, that the Remedial Action is Operational and Functional, EPA
8 will so certify in writing to Settling Defendants.

9 c. If EPA fails to certify that the Remedial Action is Operational
10 and Functional within 90 Days after a request, EPA shall be deemed to have denied
11 the request, unless Settling Defendants agree to an extension of time. Settling
12 Defendants may, at any time thereafter, invoke Dispute Resolution pursuant to
13 Section XX (Dispute Resolution).

14 d. Nothing herein shall preclude Settling Defendants from
15 requesting, and EPA from granting, pursuant to the same procedures set forth in
16 Subparagraphs a-c of this Paragraph, certification that a phase of the Remedial
17 Action is Operational and Functional; provided, however, that any such
18 certification shall be conditioned on such phase remaining Operational and
19 Functional at the time Settling Defendants request certification for the final phase
20 of the Remedial Action. In the event Settling Defendants request certification that
21 a phase of the Remedial Action is Operational and Functional, and such request is
22 granted, the resulting certification shall not affect the Operational and Functional
23 Date.

24 e. Upon approval of the certification report by EPA or pursuant to
25 a ruling by the Court, the Operational and Functional Date shall be the date when
26 the last report requesting certification of the final phase of the Remedial Action
27 was submitted.

28 f. The Operational and Functional Date established pursuant to

1 this Paragraph shall not be affected if existing contamination greater than or equal
2 to ten-times the levels listed in Table 2 of the SOW has migrated vertically into the
3 intermediate zone and this existing contamination prevents Settling Defendants
4 from meeting the Performance Criteria, provided the Settling Defendants are
5 taking the response actions determined by EPA to be necessary to reverse the trend
6 pursuant to the SOW.

7 g. Once EPA has determined that the Remedial Action is
8 Operational and Functional pursuant to this Paragraph, the Operational and
9 Functional Date shall not be affected in the event EPA subsequently determines,
10 pursuant to Paragraph 13, that modification to the Work specified in the SOW or in
11 work plans developed pursuant to the SOW is necessary to achieve and maintain
12 the Performance Criteria, to meet discharge ARARs, or to implement Mid-Valley
13 Monitoring.

14 51. Certification of Completion.

15 a. No later than 90 Days before, and no sooner than 120 Days
16 prior to, the eight-year anniversary of the Operational and Functional Date, and
17 upon Settling Defendants concluding that the Remedial Action is still Operational
18 and Functional, Settling Defendants shall schedule a pre-certification inspection to
19 be attended by Settling Defendants and EPA. The Settling Defendants shall submit
20 a Facility Status Package to EPA which shall include, but not be limited to, all
21 maintenance reports, performance reports, sampling results, and all other
22 deliverables updated as appropriate to reflect the performance and condition of the
23 containment and Mid-Valley Monitoring systems including all wells, pipelines,
24 and treatment facilities. If, after the pre-certification inspection, the Settling
25 Defendants still believe that the Remedial Action is Operational and Functional,
26 Settling Defendants shall submit a written report by a registered professional
27 engineer, in accordance with the SOW, stating that the Remedial Action is
28 Operational and Functional. The report shall contain the following statement,

APPENDIX B

FINANCIAL INFORMATION

APPENDIX B
Financial Documents Relied on by EPA to Perform ATP Analysis

1. Email from Timothy McCollum to Kate Taylor, dated 12/24/2008, with enclosures.
 - a. LeVan Specialty, Inc. IRS Form 1120, U.S. Corporation Income Tax Returns, 2005, 2006 and 2007
 - b. Orange Canyon Plaza LP Statement of revenues for twelve months ending December 31, 2006 and 2007
 - c. Orange Canyon Plaza financial statements for eleven months ended November 30, 2008
 - d. LeVan Specialty, Inc. financial statements for 2006 and 2007
2. Email from Timothy McCollum to Kate Taylor, dated 01/05/2009, with enclosure
 - a. Financial statements, eleven months ended November 30, 2008
3. Email from Timothy McCollum to Kate Taylor, dated January 14, 2009, with enclosures
 - a. Bank of America account number ****06529, monthly statements ending January 31, 2008 through December 31, 2008
 - b. Appraisal of Orange Canyon Village, dated August 8, 2001
4. Email from Timothy McCollum to Kate Taylor, dated 04/01/2009, with enclosures
 - a. Registration Card from 10/14/2008 to 10/14/2009
 - b. Grant Deed by Wolf Machinery Co. to LeVan Specialty., Inc., dated April 1, 1976
 - c. Record #93-156867 filed in Los Angeles County January 26, 1993
5. Letter, dated September 29, 2009, from Tim McCollum to EPA regarding split in interests between the land and building
6. Letter, dated November 2, 2009, from Tim McCollum to EPA, providing IRS Schedule (Supplemental Income and Losses) for 1989.
7. Letter, dated November 23, 2011, from Tim McCollum to EPA, providing IRS Form 1120 for U.S. Corporation Income Tax Returns for 2009 and 2010.